

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DAVID C. HOBSON and D.C.
HOBSON, DDS, MS, a
professional corporation,

Plaintiffs,

NO. CIV. S-02-0886 WBS PAN
NO. CIV. S-06-1805 WBS EFB
CONSOLIDATED

v.

ORDER

ORTHODONTIC CENTERS OF
AMERICA, INC. and ORTHODONTIC
CENTERS OF CALIFORNIA, INC.,

Defendants.

ORTHODONTIC CENTERS OF
CALIFORNIA, INC.,

Plaintiff,

v.

DAVID C. HOBSON, D.D.S., M.S.
and D.C. HOBSON, D.D.S., M.S.,
a professional corporation, _____

Defendants. _____

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1 Hobson is entitled to recover the full amount of the
2 judgment in his breach of contract action against OCA and OCC.
3 In return, OCA is entitled to recover the amounts owed by Hobson
4 on the three underlying promissory notes. Hobson has always
5 acknowledged liability on the notes and has asked only that the
6 amounts due on the notes be applied as a setoff against his
7 recovery for the breach of contract.

8 OCA and OCC have steadfastly refused Hobson's offers to
9 offset their claims on the promissory notes against his judgment
10 in the breach of contract action. Instead, OCC filed a complaint
11 to recover on the promissory notes in the California Superior
12 Court in San Joaquin County. Then OCC filed bankruptcy, and
13 while the automatic stay prevented Hobson from asserting his
14 offset, OCC moved for summary judgment in the state case. Before
15 the state court could dispose of this matter, OCC removed the
16 case to this court on the grounds that it is a "core proceeding"
17 in the bankruptcy. OCC then filed a motion to transfer venue of
18 this case to the United States Bankruptcy Court for the Eastern
19 District of Louisiana, which this court denied on January 9,
20 2007. (January 9, 2007 Order 5.)

21 OCA and OCC's goal in throwing all of these procedural
22 hurdles in the way of Hobson's efforts to offset these claims is
23 transparent. The \$270,360 bond posted by OCA in Case No. Civ. S-
24 02-0886 would be insufficient to satisfy Hobson's total judgment
25 for \$444,538.88.¹ OCA and OCC hope to satisfy their own judgment
26

27 ¹ The court adopts the calculation in Exhibit J to the
28 Declaration of Matthew C. Bradford for the interest on the
judgment in Case No. Civ S-02-0886 through August 6, 2007. As of

1 for \$104,662.45² on the notes by levying on Dr. Hobson's assets,
2 and then force him to find a way to satisfy the balance due on
3 his judgment against them - a task which they obviously intend to
4 make as difficult as possible.

5 Fairness and equity dictate that these claims be offset
6 against each other. The claims arise out of the same set of
7 underlying facts and contractual obligations and are due to and
8 from the same parties. The gamesmanship must end sometime, and
9 that time is now. OCA and OCC are cautioned against making any
10 futile motions for reconsideration of this order. It is the
11 considered judgment of this court, after considering all of the
12 arguments raised by counsel. If OCA and OCC believe it is
13 entered in error, they of course may exercise their right of
14 appeal.

15 August 6, 2007, the judgment owed the Hobson's in Case No. Civ.
16 02-0886 was \$443,323.69.

17 28 U.S.C. § 1961 provides that "interest shall be
18 calculated from the date of the entry of the judgment, at a rate
19 equal to the weekly average 1-year constant maturity Treasury
20 yield, as published by the Board of Governors of the Federal
21 Reserve System, for the calendar week preceding the date of the
22 judgment." The interest rates for the relevant period are
23 4.78% for the week ending August 10, 2007
24 4.44% for the week ending August 17, 2007
25 4.16% for the week ending August 24, 2007.

26 Applying the Federal Reserve rate on the following
27 schedule 4.78% for 4 days, 4.44% for 7 days, and 4.16% for 12
28 days, the average daily interest rate for these twenty-three days
is 4.35%, resulting in a daily increase of Hobson's judgment in
Case No. Civ. 02-0886 of \$52.83 or an increase of \$1,215.19.

29 ² The court adopts the calculation in Exhibit H to the
30 Declaration of Matthew C. Bradford for the interest on the
31 promissory notes through August 6, 2007. The combined interest
32 on the promissory notes due OCC is \$21.02 per day. The court
33 accordingly awards a further \$483.46 on the promissory notes to
34 account for the twenty-three extra days from August 6, 2007 to
35 the date of this order.

1 IT IS THEREFORE ORDERED that:

2 (1) Cases No. Civ. S-02-0886 and S-06-1805 are hereby
3 CONSOLIDATED.


4 (2) Hobson's motion for summary judgment in Case No.
5 Civ. S-06-1805 is GRANTED, and judgment shall be entered against
6 Hobson in amount of \$104,662.45 in that action.

7 (3) Hobson's request to offset the judgment against him
8 in Case No. Civ. S-06-1805 against the judgment in Case No. Civ.
9 S-02-0886 in which OCA and OCC are the judgment debtors and
10 Hobson is the judgment creditor is GRANTED. The \$104,662.45
11 judgment in Case No. S-06-1805 is ordered off-set against the
12 \$444,538.88 judgment in Case No. Civ. S-02-0886. The resulting
13 net judgment in favor of Hobson in these consolidated actions is
14 therefore \$339,876.43.

15 (4) plaintiffs' motion for enforcement of judgment
16 against security in Case No. Civ. S-02-0886 is hereby GRANTED.

17 LET JUDGMENT BE ENTERED ACCORDINGLY.

18 DATED: August 29, 2007

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21 WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
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